DOROTHEA M. TAYLOR
ROBERT TAYLOR

IBLA 80-93 Decided March 24, 1980

Appeal from a determination by the Alaska Townsite Trustee, Bureau of Land Management, that an appellant was ineligible to enter a townsite lot after October 21, 1976.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

   The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

   The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

APPEARANCES: Dorothea M. Taylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Dorothea M. Taylor has appealed a determination made by the Alaska Townsite Trustee, Bureau of Land Management (BLM), that appellant was ineligible to establish a townsite lot after October 21, 1976.

Appellant states that the Alaska Townsite Trustee Office published lists of townsites that had open-to-entry tracts after October 21, 1976, and that in June of 1977 she staked out a one acre tract of land at the Nondalton townsite according to instructions she received at the Anchorage office. The record does not reflect the nature of the instructions appellant received. Appellant notes that in June of 1978 she checked with the Anchorage office to learn if there were any legal complications connected with acquiring ownership of the land she had staked. Appellant states that she was told that there were no legal obstacles as long as she constructed a cabin of proper dimensions on the property. Appellant states that she then chartered a large plane and had materials flown from Anchorage to Nondalton for the cabin. She states that she completed the cabin in July of 1978 at considerable expense, and that pictures of the cabin and a description of the staked land are on file in the Anchorage office, together with dimensions of the cabin.

George E. M. Gustafson, the Alaska Townsite Trustee, wrote to appellant on March 15, 1979, informing her that, in an opinion dated February 20, 1979, the Regional Solicitor had concluded that persons who began occupancy of unsubdivided townsite lands after October 21, 1976, could not claim land under the townsite laws because these laws were repealed as of that date by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976). In that opinion the Regional Solicitor noted that section 701(a) of FLPMA, 90 Stat. 2786, only protected land use rights existing on the date of approval of FLPMA (October 21, 1976), and persons not occupying a townsite lot on that date could not thereafter acquire rights to a lot. In a letter dated May 3, 1979, in response to a telephone conversation with appellant on October 1, 1979, Gustafson informed her that she had a right to appeal to the Interior Board of Land Appeals.

Appellant, in her statement of reasons, argues that she staked out a one acre tract of land at the Nondalton townsite according to the instructions she received in the North Dalton office. She emphasizes that in June of 1978 she was told by the Anchorage office that there were no legal obstacles connected with acquiring ownership of the land she had staked.

In a recent decision, Royal Harris, 45 IBLA 87 (1979), the Interior Board of Land Appeals examined an appeal involving almost identical facts and issues and held:

> It is not clear from the file under what statutory authority appellant first initiated his claim. One of the townsite statutes was the Act of May 25, 1926, 44 Stat. 629, 43 U.S.C. §§ 733-36 (1970), which allowed Alaska Natives to obtain townsite lots. This statute, as well as the other townsite laws, was repealed by section 703 of FLPMA, 90 Stat. 2790. The question then becomes whether

> appellant has a valid existing right under section 701 of FLPMA, which provides that nothing in the Act shall be construed as terminating any patent, or other land use right or authorization existing on the date of approval of the Act (Oct. 21, 1976). The events giving rise to this appeal postdate the effective date of the Act. Therefore, on October 21, 1976, appellant could have had no valid existing right which would survive FLPMA. Stu Mach, 43 IBLA 306 (1979). When appellant wrote to BLM on May 9, 1977, he had only a hope or expectancy. However, use or occupancy of the public land granted subsequent to the effective date of FLPMA must be under authority of that Act, 43 U.S.C. § 1732(b) (1976); William J. Coleman, 40 IBLA 180 (1979), and the erroneous advice provided by BLM could create no rights not authorized by law. Belton E. Hall, 33 IBLA 349 (1978).

Appellant argues that as a citizen of the United States she should be able to rely on an agreement made with an officer of the U.S. Government and that it is the duty of that Government to protect her right to the above named property. This argument is premised on the fact that BLM is estopped from rejecting her claim to the townsite lot. In Royal Harris, supra, the Board dealt with an argument based on the same premise by the appellant who had partially constructed a residence on his lot and spent over $1,500 on building materials. The Board said:

> It is well settled law that the Department can alienate interests in land belonging to the United States only within the limits authorized by law. Union Oil Co. of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).
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> William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 89 (1976), illuminates the principle above as follows:
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> > There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).

We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct: "[T]hat the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit (243 U.S. at 409)."

We sympathize with appellant's expenditures of means and materials in building the structure in the case at bar. However, the Trustee's

letter, from which this appeal is taken, suggests that one possible remedy lies with the municipality.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the determination appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

I dissented to the majority decision in Royal Harris, 45 IBLA 87, 93. I remain unconvinced as to the correctness of the majority rule enunciated therein. Nevertheless, that rule remains binding on this Board, until such time as a majority decides to reconsider the Harris determination. Accordingly, I concur in the result of this decision, it being in accord with Royal Harris, supra.

James L. Burski
Administrative Judge